

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THOMAS COMANS, III,

Petitioner,

vs.

FEDERAL CORRECTIONAL INSTITUTION,
et al.,

Respondents.

2:12-cv-00034-GMN-GWF

ORDER

This represented habeas matter under 28 U.S.C. § 2241 was held open for statistical purposes until disposition of petitioner's motion under 28 U.S.C. § 2255 in 2:07-cr-00270-RLH-GWF. That motion has been denied in this Court, and a certificate of appealability has been denied. Petitioner's appeal and application for a certificate of appealability is pending in the Ninth Circuit. The present § 2241 petition indisputably was not an appropriate vehicle to challenge petitioner's federal conviction as opposed to a § 2255 motion.

IT THEREFORE IS ORDERED that the petition shall be DISMISSED without prejudice. The dismissal is without prejudice both in that the dismissal does not adjudicate any issue raised in the petition and further in that the dismissal is without prejudice to petitioner's pursuit of appellate review in 2:07-cr-00270-RLH-GWF, subject to the orders therein.

IT FURTHER IS ORDERED that, in the event of a reversal and remand in 2:07-cr-00270-RLH-GWF, the Clerk of Court instead shall follow the Clerk's established practice with regard to the maintenance of any parallel actions instead with a 510 nature of suit code for statistical purposes. This action in all events now is and shall remain closed.

The Clerk shall enter final judgment accordingly, dismissing this action without prejudice.

DATED this 31st day of May, 2013.


Gloria M. Navarro
United States District Judge